

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Bonnie K. Soulsby; Raymond L. Soulsby

CASE 40A-0201-R-2022

40A 197266-00

40A 197267-00

40A 197268-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 197266-00, 40A 197267-00, and 40A 197268-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies

issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into the above-captioned case on April 15, 2022. The consolidation order requested Claimants to file information resolving the issue remarks by a deadline. The Court set several deadlines in subsequent orders attempting to gain further information addressing the issue remarks. The Court did not receive a response.

FINDINGS OF FACT

1. Claim 40A 197266-00 appeared with the following issue remarks:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE.
DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A
FLOW RATE OF 4.00 CFS.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION
FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO
MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED
TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE
ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT
AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS
CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE
MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA
WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS
ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS
THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE
REMOVED FROM THE CLAIM.

2. Claim 40A 197267-00 appeared with the following issue remark:

THE POINT OF DIVERSION, MEANS OF DIVERSION, AND PLACE
OF USE MAY BE INCORRECT. IT IS UNCLEAR IF THE INTENT OF
THIS CLAIM IS FOR STOCK DRINKING DIRECTLY FROM
GALLOWAY CREEK, OR IF IT IS FOR STOCK DRINKING FROM A
RESERVOIR.

3. Claim 40A 197268-00 appeared with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

4. The flow rate appearing on the Preliminary Decree abstract for Claim 40A 197266-00 is 7.15 cubic feet per second. This flow rate was set by a previous Water Master in Water Court Case 40A-139 See Master's Report issued March 3, 1993; See also Order Adopting Master's Report issued August 17, 1993.

5. The original Statement of Claim form for Claim 40A 197267-00 filed April 23, 1982 indicates a reservoir was part of the claimed right. However, the reservoir component is crossed out. It is unclear as to whether the original claimant, Joe E. Soulsby, intended to claim a reservoir. Claimants were given multiple opportunities to clarify whether a reservoir was historically part of this claimed right. The Court did not receive any response.

6. The issue remarks should be removed from the above-captioned claims.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. Claim 40A 197266-00 may remain as it appears in the Preliminary Decree for Basin 40A because a previous Water Master modified the flow rate and the Court will respect the previous Master's findings in that case.

2. Claims 40A 197267-00 and 40A 197268-00 may remain as they appeared in the Preliminary Decree for Basin 40A because the issue remarks and information behind the remarks do not overcome the prima facie status of each claim.

3. The evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Bonnie K. Soulsby
Raymond L. Soulsby
PO Box 104
Stanford, MT 59479

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 197266-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BONNIE K SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

RAYMOND L SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

Priority Date: MAY 16, 1912
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 7.15 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 189.00
Source Name: WEST GALLOWAY CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNW	28	10N	17E	WHEATLAND

Period of Diversion: MAY 1 TO SEPTEMBER 30
Diversion Means: DAM
MEANS OF DIVERSION INCLUDES A HEADGATE.
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNW	28	10N	17E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1
Dam Height: 11.00 FEET
Depth: 8.00 FEET
Surface Area: 0.50 ACRES
Capacity: 1.60 ACRE-FEET
Period of Use: MAY 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	45.00		S2NW	28	10N	17E	WHEATLAND
2	144.00		SW	28	10N	17E	WHEATLAND
Total:	189.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

197266-00

197269-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 197267-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BONNIE K SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

RAYMOND L SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

Priority Date: MAY 17, 1912

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GALLOWAY CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	28	10N	17E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	28	10N	17E	WHEATLAND

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 197268-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BONNIE K SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

RAYMOND L SOULSBY
PO BOX 104
STANFORD, MT 59479 0104

Priority Date: JUNE 10, 1887

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

***Volume:** 346.80 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 204.00

Source Name: TIMBER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	33	10N	17E	WHEATLAND

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	95.00		NE	4	9N	17E	WHEATLAND
2	26.00		NESE	4	9N	17E	WHEATLAND
3	83.00		SE	33	10N	17E	WHEATLAND

Total: 204.00